IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2920 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE A.S.DAVE

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

SATTARBHAI HAJIBHAI PADHIYAR

Versus

KB LADOLA - Respondent

==========

Appearance :

SHRI HASHIM QURESHI for THE Petitioner

SHRI IM PANDYA ASSISTANT OVERNMENT PLEADER for the Respondent State

==========

CORAM :HON'BLE MR.JUSTICE A.S.DAVE

Date : 27/06/2005

ORAL JUDGMENT

This writ petition under Article 226 of the Constitution of India is filed with a prayer to issue writ of mandamus or any other appropriate writ, order of direction to the respondents to give promotion to the petitioner from the date when juniors to the petitioner came to be promoted, a further prayer is made to direct the respondents to give higher pay scales to the petitioner when the petitioner has completed his 9 years of service in accordance with Government Resolutions and to pay other consequential benefits.

It is the case of the petitioner that after appointment on 01.02.1964, the petitioner passed his Pre-service Training Examination in the first attempt in the year 1968 and thereafter, the Departmental Examination in the year 1969. The petitioner was promoted as Senior Clerk in the year 1986, while junior to the petitioner was promoted in the year 1980. According to the petitioner, the seniority list which was prepared and subsequently listed, he was at serial No.288 in the year October, 1995 and thereafter, he came to know about the fact that one Shri V.J.Kukadia, junior to the petitioner was promoted as Senior Clerk in the year 1980.

It is also a case of the petitioner that on basis of his continuous service for a period of 9 years, he is entitled to receive higher pay scale from the year 1989 and accordingly, if his claim for promotion is accepted from the date when his

junior is promoted, he would get substantial benefit and his pay revision may also go upward.

Shri Hasim Qureshi for the petitioner has relied on the averments and submissions made in the petition, at the same time, he submitted that he has no instructions, from his client, after this petition is filed and, therefore, he is unable to make further submissions to the denial to his claim by the respondent by filing affidavit in reply by one Joint Director of Agriculture, State of Gujarat.

Shri I.M.Pandya, learned Assistant Government Pleader has drawn the attention of this Court to paragraph Nos.4, 5 and 6 of the affidavit in reply and submitted that so far as claim of the petitioner to get promotion from the date when his junior Shri V.J.Kukadia came to be promoted with effect from 14.07.1980 is concerned, it is founded on wrong assumptions, since said Shri V.J.Kukadia had passed Departmental Examination earlier then the petitioner and as per the policy framed by the State of Gujarat in the matter of compassionate appointment, the beneficiary was duty bound to clear Pre-Service Training Examination as well as the Departmental Examination for further promotion. Therefore, according to Shri Pandya, the petitioner could not have claimed parity that Shri V.J.Kukadia, who was promoted from the post of Treasore Clerk to the post of Senior Clerk as early as on 14.07.1980. It was further submitted by Shri Pandya that the claim of the petitioner is quite belated, since Shri Kukadia came to be promoted in the year 1980 and this Special Civil Application No.2920 of 1996 is filed after about 15 years on the ground that the seniority list was available to the petitioner in the year 1995 only.

I have heard the learned advocate for the parties and perused the record of the case. It is evident from the record produced

by the petitioner that said Shri V.J.Kukadia had passed Departmental Examination in the year 1966, while the petitioner has passed the vary same Departmental Examination on 5th August 1968. It is very clear that as per the relevant Rules, Shri Kukadia has passed the Departmental Examination earlier then said Shri Padiyar and, therefore, his promotion is rightly given in the year 1980, when the petitioner was not even in the Zone of consideration. Since this Court is unable to accept the first claim of the petitioner with regard to the promotion to the post of Senior Clerk from the date when his junior is promoted, consequently, relief of higher pay scale on the ground of completion of 9 years service as claimed by the petitioner, for which no directions can be given to the respondents. It is made clear that this order will not came in the way of the petitioner, if he is otherwise eligible for getting higher pay scale on completion of 9 years of service on relevant posts.

With the aforesaid observations and directions, this petition deserves to be rejected. Rule is discharged with no order as to costs.

(Anant S.Dave)
Judge
*Shitole